

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1699 – HB 1538

April 1, 2014

SUMMARY OF ORIGINAL BILL: Prohibits electronic cash dispensing devices in certain businesses and establishments from accepting the electronic benefit transfer (EBT) cards by temporary assistance for needy families (TANF) recipients.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue – Exceeds \$400,000

Increase State Expenditures - \$528,300/Recurring
\$7,000/One-Time

Other Fiscal Impact – If the state is determined to be noncompliant with federal regulations, the state could be assessed a penalty by the federal Department of Health and Human Services. It is assumed that any penalty assessed will be at least five percent of the TANF Block Grant. In FY12-13, a five percent penalty would equal \$9,576,200.

IMPACT TO COMMERCE OF ORIGINAL BILL:

Increase Business Expenditures – Exceeds \$400,000

Other Commerce Impact – If the federal government imposes a penalty on the state, the result will be less funding to TANF recipients which in turn will result in less money introduced into the state's economy.

SUMMARY OF AMENDMENTS (014991, 015609): Amendment 014991 deletes all language after the enacting clause. Effective July 1, 2015, prohibits the use of an EBT card by a TANF recipient at liquor stores, licensed liquor retailers, casino, gambling, or gaming establishments, adult-oriented businesses, businesses permitted for on-premises consumption of wine and liquor, professional bondsman businesses, tattoo studios, and body piercing establishments.

Requires the Department of Human Services (DHS), by January 1, 2015, to compile and maintain a database of all entities located within the state that are included in the prohibition. The database will be updated annually and a list of such entities is to be distributed to government officials by January 15 of each year.

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Requires, on or after July 1, 2015, any third party entity contracting with DHS to provide automated processing, management, or delivery of any electronic benefit transfer card program to ensure EBT cards are not operative at any of the businesses in the database. Establishes civil penalties ranging from \$1,000 to \$5,000 for violations by any prohibited entity or employee of such entity that knowingly accepts TANF assistance benefits from an EBT card for the purchase of goods or services or the third party administrator for not disabling the use of the EBT card at the prohibited entities.

Requires any TANF recipient who knowingly uses an EBT card in an automated teller machine or point-of-sale device in a prohibited entity to reimburse the department for the amount withdrawn and used subject to any prohibition in federal law. Upon a third or subsequent violation, if permitted by federal law, the person shall be permanently disqualified from receiving public assistance benefits by means of direct cash payment or an EBT card.

Requires DHS to establish a system for reviewing EBT transactions on at least a quarterly basis and take any administrative or legal action as may be necessary to enforce the provisions of the bill as amended, including the issuance of civil penalties and by seeking injunctive relief in the chancery court of the county in which the entity is located. Requires all funds collected from civil penalties to be earmarked to be used by the department for administering the provisions of the bill as amended.

Requires DHS to conduct a study to determine ways to improve program integrity efforts of the EBT program and report the results to the Senate Commerce and Labor Committee and the House Health Committee by January 15, 2016.

Amendment 015609 makes a technical correction and corrects a typographical error.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

**Increase State Expenditures – Exceeds \$242,500/One-Time
\$268,200/Recurring**

Other Fiscal Impact – Any civil penalties collected in FY15-16 and subsequent years will be earmarked for DHS to use in administering the bill requirements which will result in a shift of revenue from the General Fund to the department. Due to the requirements of the bill, any civil penalties assessed are estimated to be minimal resulting in a net impact to state revenue of not significant.

Assumptions for the bill as amended:

- Due to recent legislation, DHS has implemented new procedures in conducting investigations regarding business that may have violated Public Law 112-96 (Middle

Class Tax Relief Act) and also quarterly procedures as required by state law. While quarterly procedures will not go into effect until July 1, 2014, the department is currently completing pre-emptive measures which include monitoring all businesses currently included in the state law and all EBT card transactions within those establishments. The department is also currently notifying businesses and cardholders of the penalties that will be assessed July 1, 2014.

- The bill as amended will significantly increase the overall number of businesses that will be monitored, tracked, and investigated by DHS by approximately 11,000 businesses.
- The department is required to create a database monitoring system by January 1, 2015. In order to construct the database, both current staff and contractors will be utilized. DHS estimates approximately 5,181 total programming hours will be necessary. Current DHS staff will contribute 900 hours to the project. The remaining 4,281 hours will be performed by contractors and include: requirements gathering (300 hours); design (761 hours); development and testing (2,655 hours); and UAT and migration (565 hours). Based on information provided by DHS, contractor hourly rates range from \$55 to \$75 resulting in an increase in one-time expenditures exceeding \$235,455 (4,281 hours x \$55 per hour).
- DHS will need two additional special investigator positions to monitor and complete investigations of the additional businesses resulting in an increase in recurring expenditures of \$148,200 [(\$61,000 salaries and benefits + \$6,000 travel + \$400 telephones + \$300 supplies + \$1,400 LAN/WAN + \$5,000 office space) x 2 positions]. One-time costs of \$2,000 for computers.
- According to information DHS received from its current vendor for processing and management of the EBT cards, the pricing for cash transaction blocking, as required by the proposed legislation, will result in one-time expenditures of \$5,000 for the initial set-up and recurring expenditures of \$120,000 for fraud navigation services.
- The total estimated increase in one-time expenditures exceeds \$242,455 (\$235,455 + \$5,000 + \$2,000) and recurring expenditures is \$268,200 (\$148,200 + \$120,000).
- DHS will not incur a significant increase in expenditures to complete the mandated study and to report the findings by January 15, 2016. Any increase in expenditures can be accommodated within existing resources.
- To date, no civil penalties have been assessed. By earmarking any revenue collected from civil penalties to DHS instead of the funds being deposited into the general fund there will be a shift of future revenue from the general fund and revenue recognition to DHS. The amount of revenue cannot be quantified, but due to the requirements for DHS to block the operability of EBT cards at the restricted businesses by July 1, 2015, it is assumed that any civil penalties assessed will be minimal. The net impact is estimated to be not significant. Any shift in revenue would occur in FY15-16 at the earliest.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENTS:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- If individuals who purchase goods with EBT cash transactions choose to shop in different establishments due to the provisions of the legislation, there could be a negative impact to the revenues of the establishments that will no longer receive the business.
- The establishments that have electronic cash dispensing devices that do not have to disable access to EBT transactions may gain business and therefore incur a positive impact in revenue.
- The net impact to commerce and jobs is estimated to be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise".

Lucian D. Geise, Executive Director

/kml